

2-22-2011

Naranjo v. Idaho Dept. of Correction Clerk's Record Dckt. 37027

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IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

RICHARD NARANJO and SYLVIA NARANJO,
husband and wife,

PLAINTIFFS-APPELLANTS,

vs.

IDAHO DEPARTMENT OF CORRECTION,

DEFENDANT-RESPONDENT.

*Appealed from the District Court of the Fourth Judicial
District of the State of Idaho, in and for ADA County*

Hon CHERI COPSEY, District Judge

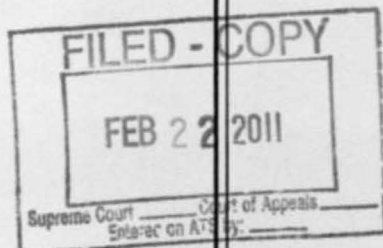
GREG J. FULLER

Attorney for Appellant

ANDREW C. BRASSEY

Attorney for Respondent

COPY



37027

IN THE SUPREME COURT OF THE STATE OF IDAHO

RICHARD NARANJO and SYLVIA
NARANJO, husband and wife,

Supreme Court Case No. 37027

Plaintiffs-Appellants,

vs.

IDAHO DEPARTMENT OF CORRECTION,

Defendant-Respondent.

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE CHERI C. COPSEY

GREG J. FULLER

ANDREW C. BRASSEY

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

TWIN FALLS, IDAHO

BOISE, IDAHO

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Case: CV-PI-2008-23381 Current Judge: Cheri C. Copsey
 Richard Naranjo, etal. vs. State Of Idaho Department Of Correction

Richard Naranjo, Sylvia Naranjo vs. State Of Idaho Department Of Correction

Date	Code	User		Judge
12/10/2008	NCPI	CCRANDJD	New Case Filed - Personal Injury	Cheri C. Copsey
	COMP	CCRANDJD	Complaint Filed	Cheri C. Copsey
	SMFI	CCRANDJD	Summons Filed	Cheri C. Copsey
6/5/2009	AFOS	MCBIEHKJ	Affidavit Of Service 6/2/09	Cheri C. Copsey
	ACKN	MCBIEHKJ	Acknowledgment Of Service 6/2/09	Cheri C. Copsey
6/26/2009	NOAP	CCGARDAL	Notice Of Special Appearance (Brassey for State of Idaho)	Cheri C. Copsey
7/7/2009	MOTN	MCBIEHKJ	Motion to Dismiss	Cheri C. Copsey
	AFFD	MCBIEHKJ	Affidavit of Miren E Artiach in Support of Motion	Cheri C. Copsey
	MEMO	MCBIEHKJ	Memorandum in Support of Motion	Cheri C. Copsey
7/16/2009	NOHG	CCHOLMEE	Notice Of Hearing Re: Motion to Dismiss 8.6.09@2:30PM	Cheri C. Copsey
	HRSC	CCHOLMEE	Hearing Scheduled (Motion 08/06/2009 02:30 PM) Motion to Dismiss	Cheri C. Copsey
7/30/2009	AMEN	CCRANDJD	Amended Notice of Hearing re Motion to Dismiss (08.27.09@2pm)	Cheri C. Copsey
	HRSC	CCRANDJD	Hearing Scheduled (Motion to Dismiss 08/27/2009 02:00 PM)	Cheri C. Copsey
7/31/2009	HRVC	TCWEATJB	Hearing result for Motion held on 08/06/2009 02:30 PM: Hearing Vacated: Motion to Dismiss	Cheri C. Copsey
8/19/2009	AFFD	MCBIEHKJ	Affidavit of Emil F Pike in Opposition to Motion to Dismiss	Cheri C. Copsey
	MEMO	CCRANDJD	Memorandum in Opposition to Defendant Motion to Dismiss	Cheri C. Copsey
	AFFD	CCRANDJD	Affidavit in Opposition to Motion to Dismiss	Cheri C. Copsey
8/25/2009	REPL	CCHOLMEE	Reply to Plaintiffs Memorandum in Opposition to Defendants Motion to Dismiss	Cheri C. Copsey
8/27/2009	DCHH	TCWEATJB	Hearing result for Motion to Dismiss held on 08/27/2009 02:00 PM: District Court Hearing Held Court Reporter: Kim Madsen Number of Transcript Pages for this hearing estimated: Under 100 Pages	Cheri C. Copsey
	ORDS	TCWEATJB	Order Of Dismissal Without Prejudice	Cheri C. Copsey
	CDIS	TCWEATJB	Civil Disposition entered for: State Of Idaho Department Of Correction, Defendant; Naranjo, Richard, Plaintiff; Naranjo, Sylvia, Plaintiff. Filing date: 8/27/2009	Cheri C. Copsey
	STAT	TCWEATJB	STATUS CHANGED: Closed	Cheri C. Copsey
9/25/2009	JDMT	TCWEATJB	Judgment	Cheri C. Copsey
10/7/2009	APSC	CCTHIEBJ	Appealed To The Supreme Court	Cheri C. Copsey
12/2/2010	NOTC	CCLUNDMJ	Notice of Transcript Lodged	Cheri C. Copsey

000003

EMIL F. PIKE, JR.
ATTORNEY AND COUNSELOR AT LAW
P.O. BOX 302
Twin Falls, ID 83303-0302
Telephone: 208/734-9960
Fax Number: 208/734-9960
Idaho State Bar No. 974

NO. _____ FILED _____
A.M. _____ P.M. 1:26

DEC 10 2008

J. DAVID NAVARRO, Clerk
By J. RANDALL
DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Richard Naranjo and Sylvia)
Naranjo, husband and wife,)
)
Plaintiffs,)
)
vs.)
)
State of Idaho Department of)
Correction,)
)
Defendant.)
_____)

Case No. **CV PI 0823381**

COMPLAINT

Fee Category: A1
Filing Fee: \$88.00

COMES NOW the above-named Plaintiffs, and herein complain and
allege against the Defendant as follows:

I.

That Plaintiff Richard Naranjo on December 14, 2006, was an invitee
of the Idaho Department of Correction, namely, the Idaho State Penitentiary,
located south of Boise, Idaho.

II.

That on December 14, 2006, at approximately 6:45 a.m., Plaintiff
Richard Naranjo entered the Idaho maximum security institution for the purpose of

providing transportation for his son, Fred Naranjo, who on that day was being released from prison. When Plaintiff walked into the prison, he made a request as to the location of the restroom and as he was walking down the hall toward the restroom, Plaintiff Richard Naranjo was unaware that the floor had been recently mopped, that it was wet, and said Plaintiff slipped on the wet floor, fell, sustaining head and back injuries. It is asserted that the conduct of the Defendant in the maintenance of a wet floor without proper warning constituted negligence and that as a direct and proximate result of said negligence, Plaintiff Richard Naranjo has sustained personal injuries, as above described; has incurred medical expenses and loss of employment; and sustained general compensatory damages. The Plaintiff Sylvia Naranjo has been required to provide care and assistance for the Plaintiff Richard Naranjo and should accordingly be awarded monetary compensation.

III.

The Notice of Tort Claim was filed pursuant to the *Idaho Tort Claims Act*, a copy of which is attached and incorporated herein as Exhibit A to this Complaint.

IV.

Plaintiffs herein have been required to seek the services of legal counsel to represent them in this action and request that their attorney be awarded reasonable attorney's fees pursuant to Idaho Code §12-121 and for the legal costs necessarily incurred.

WHEREFORE, Plaintiffs pray judgment against the Defendant for the following relief:

1. Compensation for medical expenses necessarily incurred as a result of the injuries sustained by Richard Naranjo;
2. Compensation for lost time from employment and for loss of future income;
3. Compensation for pain and suffering and general compensatory damages for Plaintiff Richard Naranjo;
4. Compensation for Plaintiff Sylvia Naranjo for the care which has been necessarily required to be extended to her husband, Plaintiff Richard Naranjo, because of his sustained injuries;
5. For allowance of attorney's fees pursuant to Idaho Code §12-121 and for legal costs necessarily incurred; and,
6. For such other and further relief as this Court deems just and equitable.

DATED this 9 day of December, 2008.

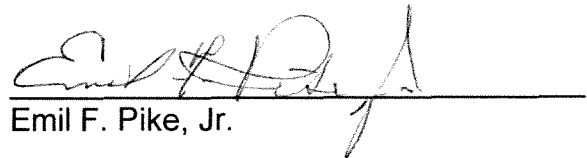

Emil F. Pike, Jr.

EXHIBIT A

EMIL F. PIKE, JR., P.A.
ATTORNEY and COUNSELOR at LAW

*P.O. Box 302
Twin Falls, ID 83303-0302*

*Telephone: (208) 734-9960
Fax Number: (208) 734-9960*

NOTICE OF TORT CLAIM

(Idaho Tort Claims Act)

TO: **IDAHO MAXIMUM SECURITY INSTITUTION**
P.O. Box 51
Boise, Idaho 83707

CLAMANT: **RICHARD NARANJO**
227 Ramage
Twin Falls, ID 83301

ATTORNEY FOR
CLAIMANT: Emil F. Pike, Jr.
P.O. Box 302
Twin Falls, Idaho 83303-0302

NARRATIVE:

COMES NOW Richard Naranjo and files this claim as against the Idaho Maximum Security Institution, P.O. Box 51, Boise, Idaho, 83707. This claim is brought pursuant to Idaho Code § 6-907.

This claim arises out of the following circumstances:

That on December 14, 2006, at approximately 6:45 a.m., your claimant, Richard Naranjo, entered the Idaho Maximum Security Institution for the purpose of providing transportation for his son, Fred Naranjo, who on that day was being released from prison. When Mr. Richard Naranjo walked into the prison, he made a request as to the location of the rest room and as he was walking down the hall toward the rest room he was unaware that the floor had been recently mopped and that it was wet. Mr. Richard Naranjo slipped on the wet floor and fell sustaining head and back injuries. At

the time of the accident there was an inmate who was mopping the floor whose name your claimant herein, Richard Naranjo, does not know. The accident was investigated by the officers and the prison warden.

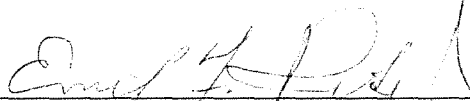
As result of the subject accident, Richard Naranjo has sustained injuries to his head and back, for which he has required medical treatment and medication. Mr. Richard Naranjo has suffered a previous injury to his head and neck and this current injury which occurred on December 14, 2006, has exacerbated and made his previous injuries much worse. The current nature and extent of said injuries are at this time not fully known to Richard Naranjo but it is believed by him that they are serious and will probably result in a permanent impairment. It is estimated that the amount of damage sustained by Mr. Richard Naranjo in this accident will approximate or exceed the sum of \$300,000.00.

At the time of making this claim, Mr. Naranjo resides at 227 Ramage, Twin Falls, Idaho, 83301. Mr. Naranjo was residing at 227 Ramage, Twin Falls, Idaho 83301, and for a period of six (6) months prior to the time this claim arose, Mr. Naranjo was residing at 227 Ramage, Twin Falls, Idaho 83301.

WITNESSES:

At the time of the filing of this Notice of Tort Claim, Claimant is not aware of the name and addresses of any potential witnesses.

DATED this 7 day of March, 2007.



Emil F. Pike, Jr.
Attorney for Claimant
P.O. Box 302
Twin Falls, ID 83303-0302

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7005 3110 0003 5391 1672

U.S. Postal Service TM	
CERTIFIED MAIL TM RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com .	
BOISE ID 83720	
OFFICIAL USE	
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Certified Fee	\$2.40
Return Receipt Fee (Endorsement Required)	\$1.85
Restricted Delivery Fee (Endorsement Required)	\$0.00
Total Postage & Fees	\$ \$4.64

0701

STAMP ID 83301

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USPS

05 MAR 07

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Idaho Sec. of State	
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City, State, ZIP+4 Boise, Id 83720-0080	

PS Form 3800, June 2002 See Reverse for Instructions

000009

JUN 26 2009

J. DAVID NAVARRO, Clerk
By A. GARDEN
DEPUTY

Andrew C. Brassey (ISB No. 2128)
John M. Howell (ISB No. 6234)
BRASSEY, WETHERELL & CRAWFORD
203 W. Main Street
P.O. Box 1009
Boise, Idaho 83701-1009
Telephone: (208) 344-7300
Facsimile: (208) 344-7077

Attorneys for Defendant Idaho
Department of Corrections

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

RICHARD NARANJO AND SYLVIA ,

Plaintiffs,

vs.

STATE OF IDAHO DEPARTMENT OF
CORRECTION,

Defendant.

Case No. CV PI 0823381

**NOTICE OF SPECIAL
APPEARANCE**

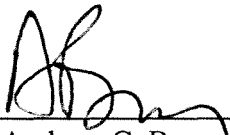
ORIGINAL

COMES NOW Defendant State of Idaho Department of Corrections, by and through its counsel of record, Brassey, Wetherell & Crawford, in the above-entitled matter, and enter a Special Appearance herein as counsel and Special Deputy Attorney General for and on behalf of the Defendants. The Appointment of Special Deputy Attorney General, attached hereto and incorporated herein by reference, is filed with the Court specifically subject to this Special Appearance and the protections afforded hereunder; it is not intended to constitute a waiver of any defenses or challenges to sufficiency of process that are preserved and protected by the filing of this Special Appearance.

This Special Appearance is made pursuant to Rule 4(i)(2), Idaho Rules of Civil Procedure, is limited and is made for the purpose of challenging the sufficiency of process pursuant to Rules 12(b)(4) and (5), Idaho Rules of Civil Procedure. By making this Special Appearance, the Defendants reserve the right to assert any and all defenses and objections they may have in this matter.

DATED this 26th day of June, 2009.

BRASSEY, WETHERELL & CRAWFORD

By 


Andrew C. Brassey, Of the Firm
Attorneys for Defendant Idaho Department of Corrections

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of June, 2009, I served a true and correct copy of the foregoing ANSWER AND DEMAND FOR JURY TRIAL upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Emil F. Pike, Jr
Attorney and Counselor at Law
P O Box 302
Twin Falls, ID 83303-0302

☒ U.S. Mail, postage prepaid
☐ Hand-Delivered
☐ Overnight Mail
☐ Facsimile 208-734-9960



Andrew C. Brassey



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

June 11, 2009

SPECIAL DEPUTY ATTORNEY GENERAL APPOINTMENT

TO WHOM IT MAY CONCERN:

Andrew C. Brassey of the firm of Brassey, Wetherell & Crawford, LLP, P. O. Box 1009, Boise, Idaho 83701-1009, is hereby appointed Special Deputy Attorney General for the purpose of representing the State of Idaho in *Naranjo, et al. v. State of Idaho*, Case No. CV-PI-0823381.

This letter of appointment will be included in the files of any court case, hearing, or other matter in which he represents the State of Idaho in this matter. This appointment is effective for the duration of the above-stated case.

Any courtesies you can extend to Mr. Brassey in his conduct of business for the State of Idaho, as my delegate, will be appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence G. Wasden", written over a horizontal line.

LAWRENCE G. WASDEN
Attorney General

LGW:blm

JUL 07 2009

J. DAVID NAVARRO, Clerk
By BRANDI BURGESS
DEPUTY

Andrew C. Brassey (ISB No. 2128)
John M. Howell (ISB No. 6234)
BRASSEY, WETHERELL & CRAWFORD
203 W. Main Street
P.O. Box 1009
Boise, Idaho 83701-1009
Telephone: (208) 344-7300
Facsimile: (208) 344-7077

Attorneys for Defendant Idaho
Department of Corrections

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

RICHARD NARANJO AND SYLVIA
NARANJO ,

Plaintiffs,

vs.

STATE OF IDAHO DEPARTMENT OF
CORRECTION,

Defendant.

Case No. CV PI 0823381

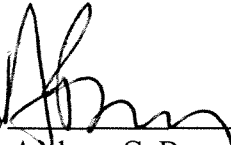
**MOTION TO DISMISS PURSUANT
TO RULE 12(b)(5), I.R.C.P.**

ORIGINAL

COMES NOW Defendant State of Idaho Department of Corrections, by and through its counsel of record, Brassey, Wetherell & Crawford, in the above-entitled matter, and move to dismiss this matter pursuant to Rule 12(b)(5), Idaho Rules of Civil Procedure. This Motion is supported by a Memorandum and an Affidavit of Miren E. Artiach filed contemporaneously herewith. Neither this Motion nor the accompanying Memorandum and Affidavit constitute a voluntary appearance in this matter, and both are filed under the protections afforded by Rule 4(i)(2), Idaho Rules of Civil Procedure. Defendant requests oral argument.

DATED this 7th day of July, 2009.

BRASSEY, WETHERELL & CRAWFORD

By 

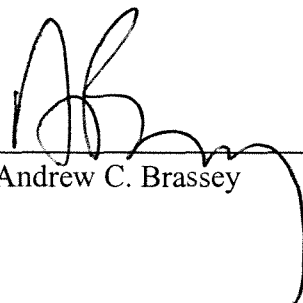
Andrew C. Brassey, Of the Firm
Attorneys for Defendant Idaho Department of Corrections

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of July, 2009, I served a true and correct copy of the foregoing **MOTION TO DISMISS PURSUANT TO RULE 12(b)(5), I.R.C.P.** upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Emil F. Pike, Jr
Attorney and Counselor at Law
P O Box 302
Twin Falls, ID 83303-0302

☒ U.S. Mail, postage prepaid
☐ Hand-Delivered
☐ Overnight Mail
☐ Facsimile 208-734-9960



Andrew C. Brassey

000011

Andrew C. Brassey (ISB No. 2128)
John M. Howell (ISB No. 6234)
BRASSEY, WETHERELL & CRAWFORD
203 W. Main Street
P.O. Box 1009
Boise, Idaho 83701-1009
Telephone: (208) 344-7300
Facsimile: (208) 344-7077

NO. _____ FILED _____
A.M. _____ P.M. 4:39

JUL 27 2009
J. DAVID NAVARRO, Clerk
By BRANDI BURGESS
DEPUTY

Attorneys for Defendant Idaho
Department of Corrections

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

RICHARD NARANJO AND SYLVIA
NARANJO,

Plaintiffs,

vs.

STATE OF IDAHO DEPARTMENT OF
CORRECTION,

Defendant.

Case No. CV PI 0823381

**AFFIDAVIT OF MIREN E.
ARTIACH IN SUPPORT OF
MOTION TO DISMISS PURSUANT
TO RULE 12(b)(5), I.R.C.P.**

ORIGINAL

STATE OF IDAHO)
) ss.
County of Ada)

MIREN E. ARTIACH, being first duly sworn upon oath, deposes and states as follows:

1. That I am over the age of twenty-one (21) years, am competent to make this Affidavit, and make this Affidavit based upon personal knowledge.
2. That I am the Deputy Secretary of State for the State of Idaho.

3. That in the normal course of my duties as Deputy Secretary of State, I oversee the service of process upon the Secretary of State pursuant to Title 6 Chapter 9, Idaho Code.

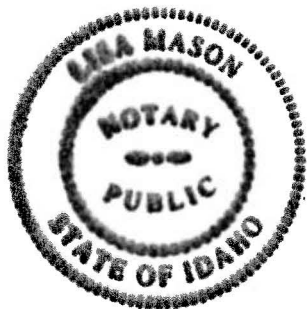
4. That as of July 6, 2009, the Office of the Secretary of State has not been served with a Summons or Complaint in the above-referenced matter.

FURTHER YOUR AFFIANT SAITH NOT.

Dated this 7th day of July, 2009.

By Miren E. Artiach
Miren E. Artiach
Deputy Secretary of State

SUBSCRIBED AND SWORN to before me this 7th day of July, 2008.



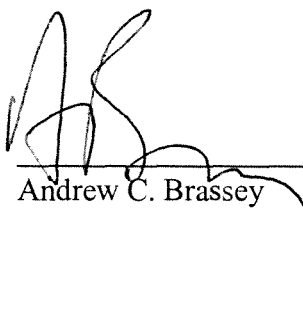
Lisa Mason
Notary Public for Idaho
Residing at: Ada County
My commission expires: 11-9-2013

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of July, 2009, I served a true and correct copy of the foregoing **MOTION TO DISMISS PURSUANT TO RULE 12(b)(5), I.R.C.P.** upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Emil F. Pike, Jr
Attorney and Counselor at Law
P O Box 302
Twin Falls, ID 83303-0302

☒ U.S. Mail, postage prepaid
☐ Hand-Delivered
☐ Overnight Mail
☐ Facsimile 208-734-9960



Andrew C. Brassey

Andrew C. Brassey (ISB No. 2128)
John M. Howell (ISB No. 6234)
BRASSEY, WETHERELL & CRAWFORD
203 W. Main Street
P.O. Box 1009
Boise, Idaho 83701-1009
Telephone: (208) 344-7300
Facsimile: (208) 344-7077

Attorneys for Defendant Idaho
Department of Corrections

NO. _____ FILED 4:39
A.M. P.M.

JUL 17 2013

J. DAVID HANVARRO, Clerk
By BRANDI SURGESS
DEPUTY

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

RICHARD NARANJO AND SYLVIA
NARANJO,

Plaintiffs,

vs.

STATE OF IDAHO DEPARTMENT OF
CORRECTION,

Defendant.

Case No. CV PI 0823381

**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS PURSUANT
TO RULE 12(b)(5), I.R.C.P.**

ORIGINAL

COMES NOW Defendant State of Idaho Department of Corrections, by and through its counsel of record, Brassey, Wetherell & Crawford, and submits this Memorandum in Support of Motion to Dismiss Pursuant to Rule 12(b)(5), Idaho Rules of Civil Procedure, as follows:

000015

FACTS AND PROCEDURAL HISTORY

Plaintiffs filed a complaint in this matter on December 10, 2008. Plaintiffs named as the sole Defendant the State of Idaho Department of Correction. The Court case history/docket reflects service was made upon the Office of the Attorney General on June 2, 2009.¹ Defendant entered a Special Appearance, pursuant to Rule 4(i)(2) I.R.C.P. on June 26, 2009 and now moves for a dismissal pursuant to Rule 12(b)(5) I.R.C.P.

LEGAL STANDARD

In the recent case of *Herrera v. Estay*, 146 Idaho 674, 201 P.3d 647 (2009), the Idaho Supreme Court addressed for the first time the legal standard applied to Rule 12(b)(4) and (5), I.R.C.P., motions. Because of the similarity of the Idaho Rules to the Federal Rules, the Court adopted the Federal approach as follows:

The difference between Rules 12(b)(4) and 12(b)(5), which “is not always clear, nor always observed,” is:

An objection under Rule 12(b)(4) concerns the form of the process rather than the manner or method of its service. Technically, therefore, a [R]ule 12(b)(4) motion is proper only to challenge noncompliance with the provisions of Rule 4(b) or any applicable provision incorporated by Rule 4(b) that deals specifically with the content of the summons. A Rule 12(b)(5) motion is the proper vehicle for challenging the mode of delivery or lack of delivery of the summons and complaint.

¹ Rule 4(d)(5), I.R.C.P., provides:

Upon the state of Idaho, or any agency thereof, service shall be made by delivering two (2) copies of the summons and complaint to the attorney general or any assistant attorney general. Upon any other governmental subdivision, municipal corporation, or quasi-municipal corporation or public board service shall be made by delivering a copy of the summons and complaint to the chief executive officer or the secretary or clerk thereof. In all actions brought under specific statutes requiring service to be made upon specific individuals or officials, service shall be made pursuant to the statute in addition to service as provided above.

Herrera, 201 P.3d at 651, quoting *U.S. v. Hafner*, 421 F.Supp.2d 1220, 1223 n. 3 (Dist.N.D.2006)(citations omitted).

ARGUMENT

Based upon the holding in *Herrera*, Defendant brings its present motion under Rule 12(b)(5), I.R.C.P. As evinced by the Court's case history/docket, although Plaintiffs served the Summons and Complaint upon the office of the Attorney General, Plaintiffs were required to comply with the provisions of Idaho Code § 6-916 in addition to any applicable Rules of Civil Procedure. Idaho Code § 6-916, part of the Idaho Tort Claims Act, provides:

In all actions under this act against the state or its employee the summons and complaint shall be served on the secretary of state with a copy to the attorney general. This section shall not be construed to release the party making service of process from serving any named defendant other than the governmental entity in compliance with other applicable statutes or rules of civil proceeding.

In all actions under this act against any employee wherein it is alleged that such employee was acting within the course and scope of his employment, a copy of the summons and complaint shall be served upon the governmental entity which is his employer.

See Idaho Code § 6-903 describing the actions that fall under the Idaho Tort Claims Act. Idaho Code § 6-916, along with Rule 4(a)(2) and 4(d)(5), I.R.C.P., was applied in *Harrison v. Bd. of Professional Discipline of the Idaho State Bd. of Medicine*, 145 Idaho 179, 177 P.3d 393 (2008), which held that the Honorable Kathryn Sticklen's dismissal of the plaintiff's claims against the State of Idaho was proper where the plaintiff served the attorney general under Rule 4(d)(5), I.R.C.P., but failed to serve the secretary of state as required by Idaho Code § 6-916 within six months of filing the complaint pursuant to Rule 4(a)(2), I.R.C.P.²

² Rule 4(a)(2), I.R.C.P., provides:

If a service of the summons and complaint is not made upon a defendant within six (6) months after the filing of the complaint and the party on whose behalf such service was required cannot show good

In this matter Service of Process upon the office of the Attorney General did not complete the requirements of service upon the State of Idaho Department of Correction. Plaintiffs were required to serve the Secretary of State. As shown in the Affidavit of Miren Artiach in Support of Motion to Dismiss Pursuant to Rule 12(b)(5), I.R.C.P, no such service has been made in this case. As a result, Plaintiffs' Complaint should be dismissed in its entirety for failure of service of process pursuant to Rule 12(b)(5), I.R.C.P.

CONCLUSION

For the aforementioned reasons, Defendant respectfully requests an Order of this Court dismissing Plaintiff's Complaint in its entirety pursuant to Rule 12(b)(5), I.R.C.P., and for such further relief as the Court deems just.

DATED this 7th day of July, 2009.

BRASSEY, WETHERELL & CRAWFORD

By 

Andrew C. Brassey, Of the Firm
Attorneys for Defendant Idaho Department of Corrections

cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with 14 days' notice to such party or upon motion.

The Idaho Supreme Court has discussed the Rule 4(a)(2) legal standard as follows:

Rule 4(a)(2) requires a party to serve the summons and complaint within six months of filing the complaint. Unless a party can show good cause for failure to serve within those six months, a court must dismiss the action without prejudice. I.R.C.P. 4(a)(2). A determination of whether good cause exists is a factual one. Consequently, when reviewing a decision dismissing a case under the rule, "the appropriate standard of review is the same as that used to review an order granting summary judgment." However, "where there is no dispute as to the factual circumstances, our review consists of ascertaining the effect of applicable law on the undisputed facts."

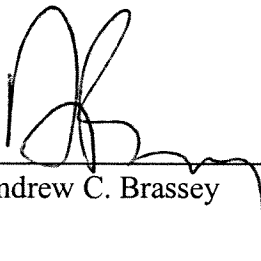
Regjovich v. First W. Inv., Inc., 134 Idaho 154, 157, 997 P.2d 615, 618 (2000) (citations omitted).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of July, 2009, I served a true and correct copy of the foregoing **MOTION TO DISMISS PURSUANT TO RULE 12(b)(5), I.R.C.P.** upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Emil F. Pike, Jr
Attorney and Counselor at Law
P O Box 302
Twin Falls, ID 83303-0302

☒ U.S. Mail, postage prepaid
☐ Hand-Delivered
☐ Overnight Mail
☐ Facsimile 208-734-9960



Andrew C. Brassey

000019

RECEIVED

AUG 13 2009

Ada County Clerk

EMIL F. PIKE, JR.

ATTORNEY AND COUNSELOR AT LAW

P.O. BOX 302

Twin Falls, ID 83303-0302

Telephone: 208/734-9960

Fax Number: 208/734-9960

Idaho State Bar No. 974

NO.

A.M.

11:19

FILED
P.M.

AUG 19 2009

J. DAVID NAVARRO, Clerk
By J. RANDALL
DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Richard Naranjo and Sylvia
Naranjo, husband and wife,

Plaintiffs,

vs.

State of Idaho Department of
Correction,

Defendant.

Case No. CV PI 0823381

**AFFIDAVIT OF EMIL F. PIKE,
JR. IN OPPOSITION TO
DEFENDANT'S MOTION
TO DISMISS**

STATE OF IDAHO)
: ss.
COUNTY OF TWIN FALLS)

COMES NOW, Emil F. Pike, Jr., being first duly sworn upon oath,
deposes and states of his own personal knowledge as follows:

1. That your affiant is attorney of record for the Plaintiffs, Richard Naranjo and Sylvia Naranjo.
2. That the Plaintiffs have a pending action against the State of Idaho Department of Correction. Your affiant had not previously filed an action against the State of Idaho Department

Affidavit of Emil F. Pike, Jr., in Opposition to Defendant's Motion to Dismiss- 1

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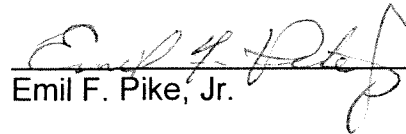
of Correction and was uncertain as to whom and where service of the Summons and Complaint should be made.

3. That your affiant, within a week prior to the date of May 29, 2009, contacted the office of the Idaho State Attorney General and was referred to one of the deputy attorneys that your affiant was advised dealt specifically with the issues involving the State of Idaho Department of Correction.
4. Your affiant, by telephone, contacted this office; spoke to a Deputy Attorney General who stated he worked with the State of Idaho Department of Correction; your affiant advised him that he had a pending lawsuit against the Department of Correction; and requested information from him as to whom service of Summons and Complaint should be made and the physical location of the office wherein service of process should be delivered.
5. Your affiant was advised that he should serve two copies of the Summons and Complaint upon the State of Idaho Department of Correction at the office of Deputy Attorney General, 1299 North Orchard Street, Suite 110, Boise, Idaho 83706.
6. Your affiant relied upon this information and on May 29, 2009, sent to Tri-County Process Serving a letter, a copy of which is here attached and incorporated into this Affidavit as affiant's Exhibit A.

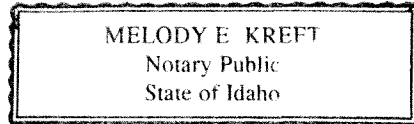
7. Said Summons and Complaint was duly served upon the State of Idaho Department of Correction on June 2, 2009; see attached copy of Affidavit of Service, incorporated herein as affiant's Exhibit B.
8. The Defendant, State of Idaho Department of Correction, on July 7, 2009, filed its Motion to Dismiss pursuant to Rule 12(b)(5) herein asserting that Plaintiffs' action should be dismissed for failure to serve the Secretary of State within six (6) months of filing the Complaint, pursuant to Rule 4(a)(2) I.R.C.P.
9. Your affiant thereupon July 10, 2009, served the State of Idaho Department of Correction by delivering a copy of the Summons and Complaint to the Deputy Secretary of State (see affiant's Exhibit C).
10. Your affiant herein asserts, on behalf of the Plaintiffs, that he should have been able to rely on information furnished to him by the State of Idaho Deputy Attorney General as to whom and where said service of process should have been made with reference to the State of Idaho Department of Correction and that the Defendant should be estopped from asserting that the service of Summons and Complaint upon the State of Idaho

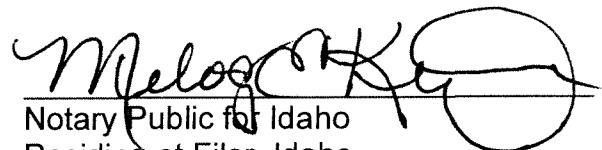
Department of Correction, which occurred on July 10, 2009,
was untimely.

Dated this 18 day of August, 2009.


Emil F. Pike, Jr.

SUBSCRIBED AND SWORN to before me this 18 day of August, 2009.




Notary Public for Idaho
Residing at Filer, Idaho
My Commission Expires 2/8/13.

CERTIFICATE OF SERVICE

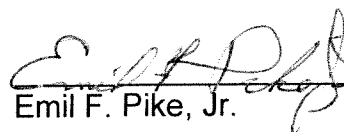
I hereby certify that I am a resident attorney of the State of Idaho and
that on the 18 day of August, 2009, I served a copy of the foregoing document, as
follows:

Via Facsimile to:

Andrew C. Brassey
BRASSEY, WETHERELL & CRAWFORD
Fax No.: (208) 344-7077

By depositing a true copy thereof in the United States mail, first-class, postage
prepaid, upon the following;

Andrew C. Brassey
BRASSEY, WETHERELL & CRAWFORD
P.O. Box 1009
Boise, ID 83701-1009


Emil F. Pike, Jr.

Affidavit of Emil F. Pike, Jr., in Opposition to Defendant's Motion to Dismiss- 4

000023

EMIL F. PIKE, JR., P.A.
ATTORNEY and COUNSELOR at LAW

*P.O. Box 302
Twin Falls, ID 83303-0302*

*Telephone: (208) 734-9960
Fax Number: (208) 734-9960*

May 29, 2009

Tri-County Process Serving
P.O. Box 1224
Boise, ID 83701

Re: Plaintiff, Richard Naranjo and Sylvia Naranjo v.
State of Idaho Department of Correction
Case No. CV PI 0823381

Dear Sir/Madam:

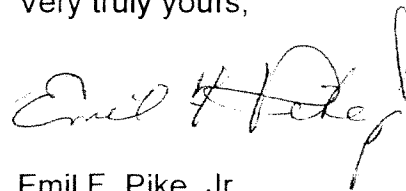
Please find enclosed two copies of the Summons and Complaint in the above-referenced matter, to be served upon the State of Idaho Department of Correction. Please serve these documents upon:

Deputy Attorney General
1299 N. Orchard Street, Ste 110
Boise, ID 83706

Also, please find enclosed my office's check in the amount of \$55.00, for your services in this matter.

Should you have any questions or concerns, please contact me at (208) 734-9960. Thank you in advance for your courtesy and assistance.

Very truly yours,



Emil F. Pike, Jr.

EFP:mek

Enclosures

EXHIBIT A

000024

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Richard Naranjo et al.

Plaintiff(s):

AFFIDAVIT OF SERVICE

vs.

Case Number: CV PI 0823381

State of Idaho Department of Correction

Defendant(s):

For:

EMIL F. PIKE, JR., P.A.
P.O. Box 302
Twin Falls, ID 83303-0302

STATE OF IDAHO

)

:ss

COUNTY OF ADA

)

Received by TRI-COUNTY PROCESS SERVING LLC on June 1, 2009 to be served on **STATE OF IDAHO DEPARTMENT OF CORRECTION.**

I, Zach D. Heesch, who being duly sworn, depose and say that on Tuesday, June 2, 2009, at 3:15 PM, I:

SERVED the within named **State of Idaho Department of Correction** by delivering **Two Copies of the Summons and Complaint** to Bill Loomis, Deputy Attorney General, a person authorized to accept service on behalf of State of Idaho Department of Correction. Said service was effected at **1299 N. Orchard Street, Ste. 110, Boise, ID 83706.**

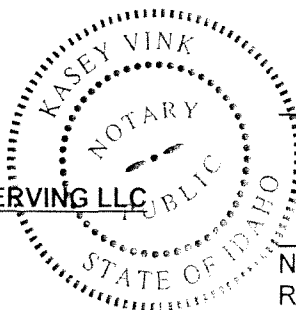
I hereby acknowledge that I am a Process Server in the county in which service was effected. I am over the age of Eighteen years and not a party to the action.

Our Reference Number: 81202

Subscribed and sworn before me today
Tuesday, June 2, 2009

TRI-COUNTY PROCESS SERVING LLC

P.O. Box 1224
Boise, ID, 83701
(208) 344-4132



Zach Heesch
Kasey Vink
Notary Public for the State of Idaho
Residing at Nampa, Idaho
My Commission Expires on March 7th, 2014

000025

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Richard Naranjo et al.

Plaintiff(s):

AFFIDAVIT OF SERVICE

vs.

Case Number: CV PI 0823381

State of Idaho Department of Correction

Defendant(s):

For:

EMIL F. PIKE, JR., P.A.

P.O. Box 302

Twin Falls, ID 83303-0302

STATE OF IDAHO

)

:ss

COUNTY OF ADA

)

JUL 15 2009

Received by TRI-COUNTY PROCESS SERVING LLC on July 9, 2009 to be served on **STATE OF IDAHO DEPARTMENT OF CORRECTION.**

I, Zach D. Heesch, who being duly sworn, depose and say that on Friday, July 10, 2009, at 2:28 PM, I:

SERVED the within named **State of Idaho Department of Correction** by delivering a true copy of the **Summons and Complaint** to Miren Artiach, Deputy Secretary of State, a person authorized to accept service on behalf of State of Idaho Department of Correction. Said service was effected at **304 N. 8th St., Boise, ID 83702.**

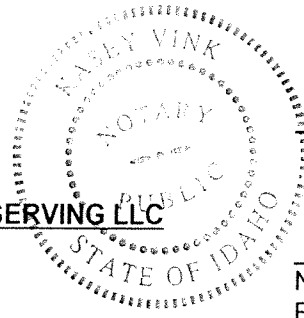
I hereby acknowledge that I am a Process Server in the county in which service was effected. I am over the age of Eighteen years and not a party to the action.

Our Reference Number: 82792

Subscribed and sworn before me today
Sunday, July 12, 2009

TRI-COUNTY PROCESS SERVING LLC

P.O. Box 1224
Boise, ID, 83701
(208) 344-4132



Zach Heesch

Kasey Vink

Notary Public for the State of Idaho
Residing at Nampa, Idaho
My Commission Expires on March 7th, 2014
EXHIBIT C

000026

RECEIVED

AUG 19 2009

Ada County Clerk

EMIL F. PIKE, JR.
ATTORNEY AND COUNSELOR AT LAW
P.O. BOX 302
Twin Falls, ID 83303-0302
Telephone: 208/734-9960
Fax Number: 208/734-9960
Idaho State Bar No. 974

NO. 11:19
A.M. 11:19

AUG 19 2009

J. DAVID NAVARRO, Clerk
By J. RANDALL
DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Richard Naranjo and Sylvia
Naranjo, husband and wife,

Plaintiffs,

vs.

State of Idaho Department of
Correction,

Defendant.

Case No. CV PI 0823381

MEMORANDUM IN OPPOSITION
TO DEFENDANT, STATE OF
IDAHO'S, MOTION TO DISMISS
PURSUANT TO RULE
12(b)(5) I.R.C.P.

It is herein contended that the Motion herein filed by the Defendant, State of Idaho Department of Correction, should be denied based upon the application of *quasi estoppel*. The legal doctrine of *quasi estoppel* applies "... when it would be unconscionable to allow a party to assert a right that is inconsistent with a prior position." **Sagewillow v. Idaho Department of Water Resources**, 138 Idaho 831, 70 P.3d 669 at p. 683 (2003) In **Atwood v. Smith**, 143 Idaho 110, 138 P.2d 310 at p. 314 (2006) the Court in the application of *quasi estoppel* set forth the following "... the doctrine of quasi estoppel 'prevents a party from asserting a right to the detriment of another party which is inconsistent

Memorandum in Opposition to Defendant, State of Idaho's, Motion to Dismiss Pursuant to Rule 12(b)(5) I.R.C.P.- 1

00027

EMIL F. PIKE, JR.
ATTORNEY AND COUNSELOR AT LAW
P.O. BOX 302
Twin Falls, ID 83303-0302
Telephone: 208/734-9960
Fax Number: 208/734-9960
Idaho State Bar No. 974

with a position previously taken' (citation of authorities). This doctrine applies when: (1) offending party took a different position than his or her original position and (2) either (a) the offending party gained an advantage or caused a disadvantage to the other party; (b) the other party was induced to change positions or (c) it would be unconscionable to permit the offending party to maintain an inconsistent position from the one he or she has already derived benefit or acquiesced in (citation of authorities). To prove quasi estoppel, it is not necessary to show detrimental reliance; instead, there must be evidence that it would be unconscionable to permit the offending party to assert allegedly contrary positions (citation of authority)."

It is herein asserted on behalf of the Plaintiffs that when Plaintiffs' counsel contacted the State of Idaho Deputy Attorney General, which Attorney General dealt with the State of Idaho Department of Correction, it was reasonable for said attorney to rely upon representation of the Deputy Attorney as to upon whom said service of process should be effectuated. It should be further noted that when said Plaintiffs' counsel was advised as to the necessity of serving the Secretary of State, that the same was forthwith done.

Rule 4(a)(2) of the I.R.C.P. state as follows:

"If a service of the Summons and Complaint is not made upon a defendant within six months after the filing of the Complaint and the party on whose behalf such service was required cannot show

Memorandum in Opposition to Defendant, State of Idaho's, Motion to Dismiss Pursuant to Rule 12(b)(5) I.R.C.P.- 2

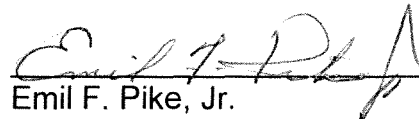
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good cause why such service was not made within
that period, the action shall be dismissed as to that
defendant. . . ."

The question to be resolved by this Court is whether good cause exists as to why such service was not made upon the Idaho Secretary of State until July 10, 2009. In ascertaining whether good cause exists, there is no bright line test. The question whether legal excuse has been shown is a matter for judicial determination in each case. *Martin v. Hoblet*, 133 Idaho 372, 987 P.2d 284 at p. 289 (1999). It is further stated that when reviewing a decision dismissing a case under that Rule (4)(a)(2) the appropriate standard of review is the same as that used to review an order granting summary judgment, that is, the Court will liberally construe the record in favor of a party against who dismissal is sought, then draw all reasonable inferences and conclusions in its favor. *Nerco Mineral Company v. Morrison Knudsen*, 132 Idaho 531, 976 P.2d 457 (1999).

It is herein asserted that the doctrine of *quasi estoppel* is applicable to the facts of this action and the application of said estoppel as against the Defendant herein, State of Idaho Department of Correction, constitutes "good cause" for an allegedly untimely service of the Summons and Complaint in this action upon the Idaho Secretary of State.

DATED this 18 day of August, 2009.


Emil F. Pike, Jr.
Attorney for Plaintiffs

Memorandum in Opposition to Defendant, State of Idaho's, Motion to Dismiss Pursuant to Rule 12(b)(5) I.R.C.P.- 3

EMIL F. PIKE, JR.
ATTORNEY AND COUNSELOR AT LAW
P.O. BOX 302
Twin Falls, ID 83303-0302
Telephone: 208/734-9960
Fax Number: 208/734-9960
Idaho State Bar No. 974

00029

CERTIFICATE OF SERVICE

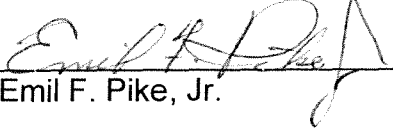
I hereby certify that I am a resident attorney of the State of Idaho and that on the 10 day of August, 2009, I served a copy of the foregoing document, as follows:

Via Facsimile to:

Andrew C. Brassey
BRASSEY, WETHERELL & CRAWFORD
Fax No.: (208) 344-7077

By depositing a true copy thereof in the United States mail, first-class, postage prepaid, upon the following;

Andrew C. Brassey
BRASSEY, WETHERELL & CRAWFORD
P.O. Box 1009
Boise, ID 83701-1009


Emil F. Pike, Jr.

EMIL F. PIKE, JR.
ATTORNEY AND COUNSELOR AT LAW
P.O. BOX 302
Twin Falls, ID 83303-0302
Telephone: 208/734-9960
Fax Number: 208/734-9960
Idaho State Bar No. 974

Memorandum in Opposition to Defendant, State of Idaho's, Motion to Dismiss Pursuant to Rule 12(b)(5) I.R.C.P.- 4

00030

Andrew C. Brassey (ISB No. 2128)
Joyce A. Hemmer (ISB No. 7202)
BRASSEY, WETHERELL & CRAWFORD
203 W. Main Street
P.O. Box 1009
Boise, Idaho 83701-1009
Telephone: (208) 344-7300
Facsimile: (208) 344-7077

Attorneys for Defendant Idaho
Department of Corrections

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

RICHARD NARANJO AND SYLVIA
NARANJO,

Plaintiffs,

vs.

STATE OF IDAHO DEPARTMENT OF
CORRECTION,

Defendant.

Case No. CV PI 0823381

**REPLY TO PLAINTIFFS'
MEMORANDUM IN OPPOSITION
TO DEFENDANT'S MOTION TO
DISMISS PURSUANT TO RULE
12(b)(5), I.R.C.P.**

COMES NOW Defendant State of Idaho Department of Correction, by and through its counsel of record, Brassey, Wetherell & Crawford, and submits this Reply to Plaintiffs' Memorandum in Opposition to Defendant's Motion to Dismiss Pursuant to Rule 12(b)(5), I.R.C.P., as follows:

Plaintiffs' attorney asserts that prior to this case he had never handled a suit against this Defendant and did not know to whom or where to serve process. Plaintiffs' attorney asserts that an unnamed Deputy Attorney General advised him that he should serve two copies of the Summons and

**REPLY TO PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS
PURSUANT TO RULE 12(b)(5), I.R.C.P. - 1**

NO. _____ FILED _____
A.M. _____
AUG 25 2003
J. DAVID NAVARRO, Clerk
By E. HOLMES
DEPUTY

00031

Complaint at the Deputy Attorney General's office. Plaintiffs argue their attorney's reasonable reliance upon this alleged representation constitutes "good cause" why the Secretary of State was not timely served and that Defendant is quasi-estopped from denying that service of process was accomplished. Plaintiffs also assert that they "forthwith" served the Secretary of State "when said Plaintiffs' counsel was advised as to the necessity of serving the Secretary of State." Memorandum in Opposition to Defendant, State of Idaho's, Motion to Dismiss Pursuant to Rule 12(b)(5), I.R.C.P., p. 2. These arguments must fail for a number of reasons outlined below.

I. Applicable law

A plaintiff wishing to bring a tort suit against a governmental entity is required to serve process upon the Idaho Attorney General and the Secretary of State. These requirements are clearly set forth in Rule 4(d)(5), I.R.C.P. ("In all actions brought under specific statutes requiring service to be made upon specific individuals or officials, service shall be made pursuant to the statute in addition to service as provided above."), and I.C. § 6-916 ("In all actions under this act against the state or its employee the summons and complaint shall be served on the secretary of state with a copy to the attorney general."). *See also Harrison v. Bd. of Prof. Discipline ...*, 145 Idaho 179, 177 P.3d 393 (2008).

II. Plaintiffs have advanced insufficient facts to support their defense that they have "good cause" pursuant to Rule 4(a)(2), I.R.C.P., to avoid dismissal.

"A determination of whether good cause exists is a factual one." *Herrera v. Estay*, 146 Idaho 674, [*], 201 P.3d 647, 652 (2009). "A party who fails to effect timely service bears the burden of demonstrating good cause." *Id.*, 201 P.3d at 656. Plaintiffs have the burden of showing facts constituting good cause to avoid dismissal. Plaintiffs have failed to present evidence sufficient to

support the contention they appear to advance in their Memorandum in Opposition, *i.e.* that a Deputy Attorney General informed Plaintiffs' attorney that service upon the Attorney General alone would effectuate service of process upon Defendant herein. Not only do Plaintiffs not identify the individual their attorney purportedly spoke with and do not indicate the date of the alleged conversation, but they do not identify with any particularity the content of the conversation. For example, Plaintiff's attorney states in his Affidavit that he advised the Deputy Attorney General "that he had a pending lawsuit against the Department of Correction." See Affidavit of Emil Pike, Jr., in Opposition to Defendant's Motion to Dismiss, ¶ 2. However, there is no indication of whether Plaintiff's attorney indicated the lawsuit was a tort action or a civil rights action, or some other cause of action. In civil rights actions, the plaintiff is not required to comply with the Idaho Tort Claims Act's requirement of service of process upon the Secretary of State. It is also unclear whether Plaintiffs' attorney's inquiry regarding service of process was so broad as to reasonably indicate to the Deputy Attorney General that Plaintiffs' attorney was seeking anything other than contact information for service upon the Attorney's General's office. Plaintiffs have failed to meet their burden of showing "good cause" for failure to timely serve the Secretary of State. Even construing the sparse facts liberally in favor of Plaintiffs, Defendant is entitled to dismissal for the reasons stated below.

III. Ignorance or mistake of the law is not "good cause" for non-compliance.

Plaintiffs argue they have "good cause" for failing to timely serve the Secretary of State because they and/or their attorney did not know they were required to do so. In Idaho, ignorance of the law is not a valid excuse for non-compliance. For example, in *Frost v. Idaho Gold Dredging Co.*, 54 Idaho 312, [*], 31 P.2d 270, 272 (1934), the Idaho Supreme Court held that where the only

justification for the claimant's delay in providing notice of his injuries was his ignorance of the requirement to give notice "as soon as practicable," the claimant did not have a good excuse for non-compliance with the law's requirements and his claim was properly barred. *See also State ex rel. McKinney v. Richardson*, 76 Idaho 9, 15, 277 P.2d 272, 275 (1954)(quoting "The fact which will excuse a statute violation, which would otherwise make violator liable for injuries resulting therefrom, is one resulting from causes or things beyond the control of the violator and mere ignorance of the law is not such a fact.").

To the extent Plaintiffs argue they made a mistake of law or misunderstood the law governing service of process, their mistake of law is insufficient justification to avoid dismissal. Idaho courts have held, for example, that a mistake of law "will not support a motion for relief from a judgment upon the ground of mistake, inadvertence or excusable neglect; a mistake, to support such a motion, must be one of fact and not of law." *Henney v. Henney*, 100 Idaho 739, 605 P.2d 503 (1979). *Henney* cites the case of *Kingsbury v. Brown*, 60 Idaho 464, 92 P.2d 1053 (1939), in which the defendant failed to file a timely answer in state court on the mistaken belief that the case would be tried in federal court. The *Kingsbury* court held the default against defendant was proper, noting that "in order to vacate a default it is incumbent upon the defendant to show that his mistake is one of fact and not of law, and the neglect of a lawyer to familiarize himself with the law governing the practice of the forum wherein his case is pending cannot be held to be excusable." *Kingsbury*, 60 Idaho at 473-74, 92 P.2d at 1057.

[A] mistake of fact is quite different in its effect and consequences, both civil and criminal, from ignorance or mistake of law; hence the rule that 'ignorance or mistake in point of fact is in nearly all cases of supposed offenses a sufficient excuse.' But this rule is held not to apply to a mistake or ignorance of the law, for in general every person is presumed to know the law of the country in which he lives. 'And

in no case can one enter a court of justice, to which he has been summoned in either a civil or criminal proceeding, with the sole and naked defense that when he did the thing complained of he did not know of the existence of the law which he violated,' nor that he believed the law to be different from what it really was.

State v. Nesbitt, 79 Idaho 1, 18-19, 310 P.2d 787 (1957)(citations omitted).

Plaintiffs' alleged "good cause" for failing to serve the Secretary of State within the prescribed time is without merit. "[F]ailure to follow the applicable Rules cannot be used as a 'bootstrap' to support an argument of 'good cause' for failure to timely serve." *Herrera v. Estay*, 146 Idaho 674, [*], 201 P.3d 647, 656 (2009). To determine whether "good cause" for failure to serve within the prescribed time exists, courts examine factors outside the plaintiff's control, such as illnesses, catastrophic events or the defendant's evasion. *See Harrison v. Bd. of Prof. Discipline*, 145 Idaho 179, 183, 177 P.2d 393, 397 (2008). However, "[i]f a plaintiff fails to make any attempt at service within the time period of the rule, it is likely that a court will find no showing of good cause." *Martin v. Hoblit*, 133 Idaho 372, 377, 987 P.2d 287, 289 (1999). Ignorance or misunderstanding of a rule as an explanation for noncompliance with that rule simply does not constitute "good cause" or valid justification sufficient to avoid dismissal for failure to timely serve process.

IV. Plaintiffs' alleged reliance was unreasonable.

Even if we assume, *arguendo*, that Plaintiffs' attorney asked the Deputy Attorney General how to effectuate service upon the Defendant herein (rather than an inquiry limited to service upon the Attorney General), Plaintiffs did not act reasonably if they relied upon statements of law by the Deputy Attorney General and said reliance does not constitute sufficient grounds to avoid dismissal. Idaho courts have agreed that "[a] statement of a proposition of law which [one party] had just as

good an opportunity to ascertain the correctness of as had the [other party], whether true or false, could not be used as a defense . . .” *Coolin v. Anderson*, 26 Idaho 47, [*], 140 P. 969, 973 (1914); *see also Paullus v. Yarnelle*, 633 N.E.2d 304 (Ind.App. 4 Dist.,1994)(“any statement by opposing counsel was a legal opinion upon which Paullus reasonably could not rely.”); *see also Intelligraphics, Inc. v. Marvell Semiconductor, Inc.*, Slip Copy, 2009 WL 330259, N.D.Cal.,2009¹ (“as a matter of law that reliance on the representations of opposing counsel on legal questions was not reasonable.”).

Defendant respectfully requests an Order of this Court dismissing Plaintiff’s Complaint in its entirety pursuant to Rule 12(b)(5), I.R.C.P., and for such further relief as the Court deems just.

¹ Citing additional case authority as follows:

Wilhelm v. Pray, Price, Williams & Russell, 186 Cal.App.3d 1324, 1332, 231 Cal.Rptr. 355 (1986) (holding that plaintiff who had her own attorney dismiss separate action based on representations by opposing counsel could not, as a matter of law, show reasonable reliance); *Rowland v. PaineWebber Inc.*, 4 Cal.App.4th 279, 286, 6 Cal.Rptr.2d 20 (1992) (holding that where plaintiffs asserted fraudulent inducement claim based on representation by investment management company that plaintiffs did not need to read written agreement containing arbitration clause, plaintiffs could not reasonably rely on that representation in seeking to avoid the arbitration clause); *Cohen v. Wedbush, Noble, Cooke, Inc.*, 841 F.2d 282, 287 (1988) (holding that plaintiffs could not avoid arbitration clause based on allegation that defendant fraudulently misled them by failing to inform them of the meaning and effect of an arbitration clause in a written agreement and stating, “[w]e know of no case holding that parties dealing at arm’s length have a duty to explain to each other the terms of a written contract”), overruled on other grounds, *Ticknor v. Choice Hotels Int’l, Inc.*, 265 F.3d 931, 941 (9th Cir.2001); *West. Hosps. Fed. Credit Union v. E.F. Hutton & Co., Inc.*, 700 F.Supp. 1039, 1041 (following *Cohen*, holding that plaintiff could not avoid arbitration based on allegation that defendant had fraudulently induced plaintiff to sign agreement containing arbitration clause by affirmatively stating that the agreement was merely “paper-work” and would not affect the plaintiff’s legal rights).

25th
DATED this ____ day of August, 2009.

BRASSEY, WETHERELL & CRAWFORD

By 

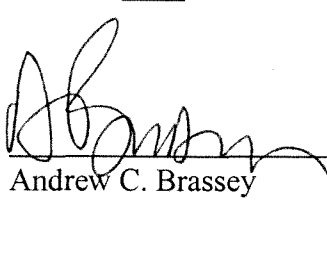
Andrew C. Brassey, Of the Firm
Attorneys for Defendant Idaho Department of Correction

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of August, 2009, I served a true and correct copy of the foregoing upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Emil F. Pike, Jr
Attorney and Counselor at Law
P O Box 302
Twin Falls, ID 83303-0302

_____	U.S. Mail, postage prepaid
_____	Hand-Delivered
_____	Overnight Mail
<input checked="" type="checkbox"/> _____	Facsimile 208-734-9960



Andrew C. Brassey

Andrew C. Brassey (ISB No. 2128)
John M. Howell (ISB No. 6234)
BRASSEY, WETHERELL & CRAWFORD
203 W. Main Street
P.O. Box 1009
Boise, Idaho 83701-1009
Telephone: (208) 344-7300
Facsimile: (208) 344-7077

Attorneys for Defendant Idaho
Department of Corrections

NO. _____ FILED _____
AM. _____ PM. 2:45

AUG 27 2009

J. DAVID NAVARRO, Clerk
By J. WEATHERBY
DEPUTY

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

RICHARD NARANJO AND SYLVIA
NARANJO,

Plaintiffs,

vs.

STATE OF IDAHO DEPARTMENT OF
CORRECTION,

Defendant.

Case No. CV PI 0823381

**ORDER DISMISSING CASE WITHOUT
PREJUDICE**

ORIGINAL

Defendant State of Idaho Department of Correction's Motion to Dismiss having duly and regularly come before this Court for hearing on August 27, 2009; and the Plaintiffs having appeared by and through their counsel of record Emil Pike, and the State of Idaho Department of Correction having appeared by and through its counsel of record, Andrew C. Brassey; and the Court having taken into consideration Defendant's Motion to Dismiss, Defendant's Memorandum in Support of Motion to Dismiss, the Affidavit of Miren Artiach in Support of Defendant's Motion to Dismiss, Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss, the Affidavit of Emil Pike in Support of Plaintiff's Opposition to Defendant's Motion to Dismiss, and Defendant's Reply to

ORDER DISMISSING CASE ^{WITHOUT} ~~WITH~~ PREJUDICE - 1

00038

Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss, the pleadings on file in

this matter; and, having considered the argument of counsel; and good cause having been shown, ^{not} ~~for~~ *failure to properly serve within six(6) months pursuant to IRCP 4(a)(2)*

IT IS HEREBY ORDERED AND THIS DOES ORDER that, Defendant's Motion to Dismiss

Pursuant to Rule 12(b)(5) IRCP is GRANTED in all respects and Plaintiffs' Complaint is hereby
Dismissed ^{without} ~~with~~ Prejudice.

DATED this 27th day of August, 2009.

Cheri Copsey

Honorable Cheri Copsey

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27 day of August, 2009, I served a true and correct copy of the foregoing **ORDER DISMISSING CASE WITH PREJUDICE** upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Emil F. Pike, Jr
Attorney and Counselor at Law
P O Box 302
Twin Falls, ID 83303-0302

☒ U.S. Mail, postage prepaid
☒ Hand-Delivered
☐ Overnight Mail
☐ Facsimile 208-734-9960

Andrew C. Brassey
Brassey, Wetherell & Crawford
203 West Main Street
P O Box 1009
Boise, ID 83701

☒ U.S. Mail, postage prepaid
☒ Hand-Delivered
☐ Overnight Mail
☐ Facsimile 208-344-7077

J. DAVID NALBANO

Clerk

NO. _____
A.M. 10:30 FILED P.M. _____

Andrew C. Brassey (ISB No. 2128)
Joyce A. Hemmer (ISB No. 7202)
BRASSEY, WETHERELL & CRAWFORD
203 W. Main Street
P.O. Box 1009
Boise, Idaho 83701-1009
Telephone: (208) 344-7300
Facsimile: (208) 344-7077

SEP 25 2009

J. DAVID NAVARRO, Clerk
By J. WEATHERBY
DEPUTY

Attorneys for Defendant Idaho
Department of Corrections

Fourth
IN THE DISTRICT COURT OF THE ~~THIRD~~ JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

RICHARD NARANJO AND SYLVIA
NARANJO,

Plaintiffs,

vs.

STATE OF IDAHO DEPARTMENT OF
CORRECTION,

Defendant.

Case No. CV PI 0823381

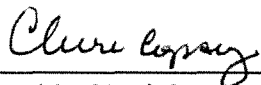
JUDGMENT

ORIGINAL

The above-referenced matter having come before the Court on Defendant State of Idaho Department of Correction's Motion to Dismiss, and the Court after having considered all the pleadings and files herein, the Memorandum and Affidavits submitted in support of such Motion, the Memorandum submitted in opposition to such Motion, and after having heard oral argument on such Motion, and the Court having issued its Order granting said Motion pursuant to I.R.C. P. 12(b)(5) and 4(a)(2);

IT IS HEREBY ORDERED ADJUDGED AND DECREED that Judgment is entered in favor of Defendant State of Idaho Department of Correction and against Plaintiffs, that Plaintiffs take nothing in this action and, Plaintiff's Complaint be dismissed in its entirety without prejudice.

DATED this 25th day of September, 2009.



Honorable Cheri Copsey

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25 day of September, 2009, I served a true and correct copy of the foregoing **JUDGMENT** upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Emil F. Pike, Jr
Attorney and Counselor at Law
P O Box 302
Twin Falls, ID 83303-0302

☒ U.S. Mail, postage prepaid
☐ Hand-Delivered
☐ Overnight Mail
☐ Facsimile 208-734-9960

Andrew C. Brassey
Brassey, Wetherell & Crawford
203 West Main Street
P O Box 1009
Boise, ID 83701

☒ U.S. Mail, postage prepaid
☐ Hand-Delivered
☐ Overnight Mail
☐ Facsimile 208-344-7077

J. DAVID NAVARRO



Clerk

EMIL F. PIKE, JR.
ATTORNEY AND COUNSELOR AT LAW
P.O. BOX 302
Twin Falls, ID 83303-0302
Telephone: 208/734-9960
Fax Number: 208/734-9960
Idaho State Bar No. 974

NO. _____
A.M. _____ FILED 418 P.M.

OCT 07 2009

J. DAVID NAVARRO, Clerk
By E. HOLMES
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Richard Naranjo and Sylvia
Naranjo, husband and wife,

Plaintiffs,

vs.

State of Idaho Department of
Correction,

Defendant.

Case No. CV PI 0823381

NOTICE OF APPEAL

To: The above-named Defendants, State of Idaho Department of Correction, and their counsel, Andrew C. Brassey of the firm Brassey, Wetherell & Crawford, and the **CLERK OF THE ABOVE-ENTITLED COURT**,

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellants, Richard Naranjo and Sylvia Naranjo, appeal against the above-named respondents to the Idaho Supreme Court, from the following:
 - (a) That Order Dismissing Plaintiffs' Claim Without Prejudice filed August 27, 2009; the Honorable, Cheri Copsey, presiding; and,

- (b) That Judgment subsequently entered on or about September 25, 2009, by the Honorable, Cheri Copsey, presiding.
2. That the parties have a right to appeal to the Idaho Supreme Court and that the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(1), Idaho Appellate Rules.
3. Preliminary statement of issues on appeal which the Appellant then intends to assert in the appeal; provided, any such list of issues on appeal should not prevent the Appellant from asserting other issues on appeal:
- (a) Did the District Court err in determining that Plaintiff failed to show good cause for service of the Summons and Complaint upon the Defendant at a time more than six (6) months from the issuance of said Summons;
- (b) Did the District Court err in finding that the Plaintiffs' service of the Complaint upon the Defendant was untimely.
4. No order has been entered sealing all or any portion of the record.
5. Appellant requests arguments of counsel and oral ruling and decision from the District Court conducted in open court on August 27, 2009.

6. Appellant requests the following documents be included in the Clerk's Record in addition to those automatically included under Rule 28:

(a) Defendant's Motion for Summary Judgment and all filed Briefs.

7. I certify:

(a) That a copy of this Notice of Appeal has been served on each Reporter of whom a transcript has been requested as named below at the address as set out below.

Kim Madsen, Court Reporter
c/o District Judge, Cheri Copsey
Court Chambers
200 West Front Street
Boise, ID 83702-7300

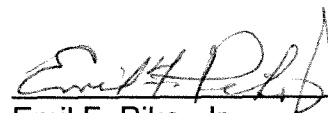
(b) That the estimated fee for preparation of the Reporter's transcript has been paid to the Clerk of the District Court or Administrative Agency.

(c) That the estimated fee for the preparation of the Clerk's or Agency's record has been paid.

(d) That the Appellant filing fee has been paid.

(e) That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 7 day of October, 2009.


Emil F. Pike, Jr.
Attorney for Appellants

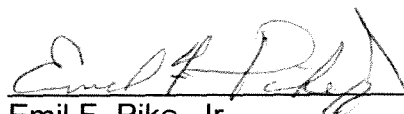
EMIL F. PIKE, JR.
ATTORNEY AND COUNSELOR AT LAW
P.O. BOX 302
Twin Falls, ID 83303-0302
Telephone: 208/734-9960
Fax Number: 208/734-9960
Idaho State Bar No. 974

CERTIFICATE OF SERVICE

I hereby certify that I am a resident attorney of the State of Idaho and that on the 2 day of October, 2009, I served a copy of the foregoing document, by depositing a true copy thereof in the United States mail, first-class, postage prepaid, upon the following:

Andrew C. Brassey
BRASSEY, WETHERELL & CRAWFORD
P.O. Box 1009
Boise, ID 83701-1009

Lawrence Wasden
Idaho State Attorney General
P.O. Box 83720
Boise, ID 83702-0010


Emil F. Pike, Jr.

EMIL F. PIKE, JR.
ATTORNEY AND COUNSELOR AT LAW
P.O. BOX 302
Twin Falls, ID 83303-0302
Telephone: 208/734-9960
Fax Number: 208/734-9960
Idaho State Bar No. 974

DEC 02 2010

TO: Clerk of the Court
Idaho Supreme Court
451 West State Street
Boise, Idaho 83720


J. DAVID NAVARRO, Clerk
By MARGARET LUNDQUIST
DEPUTY

(Case No. 37027
(NARAJANO
(
(
(
(vs.
(
(DEPARTMENT OF CORRECTION
(

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on November 6, 2009, I
lodged an appeal transcript of ___ pages in length for
the above-referenced appeal with the District Court
Clerk of the County of Ada in the 4th Judicial
District.

This transcript contains hearings held on.
...August 27, 2009


KIM I. MADSEN
Ada County Courthouse
200 West Front Street
Boise, Idaho 83702
(208) 287-7583

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

RICHARD NARANJO and SYLVIA
NARANJO, husband and wife,

Plaintiffs-Appellants,

vs.

IDAHO DEPARTMENT OF CORRECTION,

Defendant-Respondent.

Supreme Court Case No. 37027

CERTIFICATE OF EXHIBITS

I, J. DAVID NAVARRO, Clerk of the District Court of the Fourth Judicial District of the State
of Idaho in and for the County of Ada, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the course of
this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court
this 2nd day of December, 2010.

J. DAVID NAVARRO
Clerk of the District Court

By BRADLEY J. THIES
Deputy

CERTIFICATE OF EXHIBITS

00047

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

RICHARD NARANJO and SYLVIA
NARANJO, husband and wife,

Plaintiffs-Appellants,

vs.

IDAHO DEPARTMENT OF CORRECTION,

Defendant-Respondent.

Supreme Court Case No. 37027

CERTIFICATE OF SERVICE

I, J. DAVID NAVARRO, the undersigned authority, do hereby certify that I have
personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of
the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

GREG J. FULLER

ATTORNEY FOR APPELLANT

TWIN FALLS, IDAHO

ANDREW C. BRASSEY

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

J. DAVID NAVARRO
Clerk of the District Court

Date of Service: DEC 06 2010

By BRADLEY J. THIES
Deputy Clerk

CERTIFICATE OF SERVICE

00048

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

RICHARD NARANJO and SYLVIA
NARANJO, husband and wife,

Plaintiffs-Appellants,

vs.

IDAHO DEPARTMENT OF CORRECTION,

Defendant-Respondent.

Supreme Court Case No. 37027

CERTIFICATE TO RECORD

I, J. DAVID NAVARRO, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsels.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on this 7th day of October 2009.

J. DAVID NAVARRO
Clerk of the District Court

By BRADLEY J. THIES
Deputy Clerk

CERTIFICATE TO RECORD

00049

Andrew C. Brassey (ISB No. 2128)
Bradley S. Richardson (ISB No. 7008)
BRASSEY, WETHERELL & CRAWFORD
203 W. Main Street
P.O. Box 1009
Boise, Idaho 83701-1009
Telephone: (208) 344-7300
Facsimile: (208) 344-7077

Attorneys for Defendant Idaho
Department of Corrections

NO. _____ FILED 4:38 PM
DEC 27 2010
By L. AMES
CLERK

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

RICHARD NARANJO AND SYLVIA
NARANJO,

Plaintiffs,

vs.

STATE OF IDAHO DEPARTMENT OF
CORRECTION,

Defendant.

Supreme Court Case No. 37027

District Court Case No. CV PI 0823381

**OBJECTION TO CLERK'S
RECORD AND REQUEST FOR
ADDITIONAL DOCUMENT**

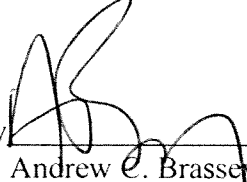
COMES NOW, Defendant State of Idaho Department of Correction, by and through its counsel of record, Brassey, Wetherell & Crawford, and, under the protection of Idaho Rule of Civil Procedure 4(i)(2), respectfully objects to the clerk's record and requests that an addition be made to the record to include Defendant's Notice of Special Appearance as filed with the Court on or about June 26, 2009. This Motion is brought pursuant to the Idaho Appellate Rules, including, but not limited to, Rule 29. This Motion does not in any fashion constitute a voluntary appearance in this matter, and it is expressly brought pursuant to Defendant's Notice of Special Appearance previously

00050

filed in this matter and under the protections afforded by Rule 4(i)(2) of the Idaho Rules of Civil Procedure.

DATED this 27th day of December, 2010.

BRASSEY, WETHERELL & CRAWFORD

By 

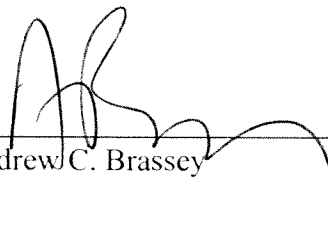
Andrew C. Brassey, Of the Firm
Attorneys for Defendant Idaho Department of Corrections

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of December, 2010, I served a true and correct copy of the foregoing upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Greg J. Fuller
161 Main Ave. W.
P. O. Box L
Twin Falls, ID 83303-0055

____ U.S. Mail, postage prepaid
____ Hand-Delivered
____ Overnight Mail
☒ Facsimile 208-734-1606



Andrew C. Brassey

NO. _____ FILED _____
A.M. _____ P.M. 2:45

JAN 20 2011

CHRISTOPHER D. RICH, Clerk
By JOHN WEATHERBY
DEPUTY

Andrew C. Brassey (ISB No. 2128)
Bradley S. Richardson (ISB No. 7008)
BRASSEY, WETHERELL & CRAWFORD
203 W. Main Street
P.O. Box 1009
Boise, Idaho 83701-1009
Telephone: (208) 344-7300
Facsimile: (208) 344-7077

RECEIVED
JAN 13 2011
ADA COUNTY

Attorneys for Defendant Idaho
Department of Corrections

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

RICHARD NARANJO AND SYLVIA
NARANJO,

Plaintiffs,

vs.

STATE OF IDAHO DEPARTMENT OF
CORRECTION,

Defendant.

Supreme Court Case No. 37027

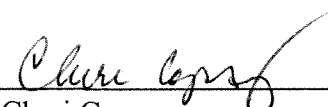
District Court Case No. CV PI 0823381

**ORDER RE: OBJECTION TO
CLERK'S RECORD AND REQUEST
FOR ADDITIONAL DOCUMENT**

The Stipulation filed contemporaneously herein between the parties having been presented to the Court, and the Court being fully advised in the premises;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant's Objection to the Clerk's Record is granted and Defendant's Notice of Special Appearance filed with the Court on or about June 2, 2009, be made part of the Clerk's Record on Appeal.

DATED this ¹⁴19 day of January, 2011.



Honorable Cheri Copsey

00052

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20 day of January, 2011, I served a true and correct copy of the foregoing upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Greg J. Fuller
161 Main Ave. W.
P. O.Box L
Twin Falls, ID 83303-0055

☒ U.S. Mail, postage prepaid
☐ Hand-Delivered
☐ Overnight Mail
☐ Facsimile 208-734-1606

Andrew C. Brassey
Brassey, Wetherell & Crawford
203 West Main Street
P O Box 1009
Boise, ID 83701

☒ U.S. Mail, postage prepaid
☐ Hand-Delivered
☐ Overnight Mail
☐ Facsimile 208-344-7077

CHRISTOPHER D. RICH

Clerk



00053